

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Tony L. Harmon,

**Case No. 2:21-cv-2745**

Petitioner,

Judge Michael H. Watson

v.

Magistrate Judge Merz

Warden, Lebanon Correctional  
Institution

Respondent.

**ORDER**

On September 9, 2021, Magistrate Judge Merz issued a Report and Recommendation ("R&R"), ECF No. 8, recommending that the Court dismiss with prejudice Petitioner's action. In the R&R, Magistrate Judge Merz specifically advised the parties that the failure to object to the R&R within fourteen days could result in forfeiture of rights on appeal. *Id.* at 18.

Petitioner requested additional time to respond to the R&R, which Magistrate Judge Merz approved. ECF Nos. 9 & 10. Even with that extension, the time for objecting has passed, and no party has objected. Accordingly, the R&R is **ADOPTED**. The action is hereby **DISMISSED WITH PREJUDICE**. The Clerk shall enter judgment for Respondent.

Pursuant to Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, the Court now considers whether to issue a certificate of appealability. "In contrast to an ordinary civil litigant, a state

prisoner who seeks a writ of habeas corpus in federal court holds no automatic right to appeal from an adverse decision by a district court.” *Jordan v. Fisher*, 576 U.S. 1071, —, 135 S. Ct. 2647, 2650 (2015); 28 U.S.C. § 2253(c)(1) (requiring a habeas petitioner to obtain a certificate of appealability in order to appeal).

When a claim has been denied on the merits, a certificate of appealability may issue only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make a substantial showing of the denial of a constitutional right, a petitioner must show “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529. U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, n.4 (1983)).

When a claim has been denied on procedural grounds, a certificate of appealability may issue if the petitioner establishes that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Id.*

The Court is not persuaded that reasonable jurists would debate the dismissal of this action. The Court therefore **DECLINES** to issue a certificate of appealability.

The Court certifies that the appeal would not be in good faith and that an application to proceed *in forma pauperis* on appeal should be **DENIED**.

**IT IS SO ORDERED.**

*/s/ Michael H. Watson*

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**MICHAEL H. WATSON, JUDGE  
UNITED STATES DISTRICT COURT**